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EXAMINER

LOCKETT, KIMBERLY R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2837

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/808,241

Applicant(s)

FACQ, PAUL

Examiner

Kim R. Lockett

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 3-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/27/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant recites the use of “a tongue (36)” and “a tongue (42)”. However the applicant appears to be referring to the same element a unitary tongue. The claims should recite for example “a tongue, a first end of said tongue (36) connected to said tongue carrier...”, “a second end of said tongue arranged in line with said window”, etc.

Furthermore, the claims lack clarity for example:

The phrase “in line with this window” is confusing. Is the applicant referring to the window already recited? Id so the claims should recite “in line with said window”. The applicant is behooved to review all of the claims for such recitations of “this” and “these”.

The claims have numerous lack of antecedent basis informalities. For example: The applicant further recites the phrases “a first position for the first direction” and “the surfaces”. These phrases lack antecedent basis. The applicant is behooved to review all of the claims for such lack of antecedent basis informalities.

The phrases “this in the first and second positions” and “in this instance” are narrative in form and constitute indefinite, functional or operational language. The structure which goes to make up the device must be clearly and positively specified.

The structure must be organized and correlated in such a manner as to present a complete operative device. Correction is required.

The recitation of the term "preferably" fails to positively recite the applicant's invention.

The recitation of "a shape deflected about the movable elements" is not understood.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehler.

As the examiner best understands the applicant's invention Ehler discloses the use of a single dual reed module(8) using two directions of air flow for each note a fixed single tongue carrier(5) with a window(6)and a tongue (column 3, line 60), associated moveable elements(9), a heel (11) formed by a rivet formed in the plate, a shape (column 3, lines 60-65)and a variable space.

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4. Claims 3-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

5. Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose **telephone number is 800-786-9199**. Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose **telephone number is (703) 308-7615, after 2/3/04 my new number will be (571) 272-2067**. The examiner can normally be reached on Tuesday through Friday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107.

  
**KIMBERLY LOCKETT**  
**PRIMARY EXAMINER**